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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

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18  
19 **Orlando Garcia,**

20 Plaintiff,

21 v.

22  
23 **Kay Kyung N. Park**, in individual  
24 and representative capacity as  
25 trustee of The Park Family Trust,  
26 dated December 19, 2005;  
27 **Benjamin Y. Park**, in individual  
28 and representative capacity as  
trustee of The Park Family Trust,  
dated December 19, 2005;  
**White Oak Cleaners Service,  
Inc.**, a California Corporation

Defendants.

Case No.

**Complaint For Damages And  
Injunctive Relief For Violations  
Of:** Americans With Disabilities  
Act; Unruh Civil Rights Act

29 Plaintiff Orlando Garcia complains of Kay Kyung N. Park, in individual  
30 and representative capacity as trustee of The Park Family Trust, dated  
31 December 19, 2005; Benjamin Y. Park, in individual and representative  
32 capacity as trustee of The Park Family Trust, dated December 19, 2005;  
33 White Oak Cleaners Service, Inc., a California Corporation; and alleges as  
34 follows:

1                   **PARTIES:**

2                   1. Plaintiff is a California resident with physical disabilities. Plaintiff  
3                   suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk.  
4                   He uses a wheelchair for mobility.

5                   2. Defendants Kay Kyung N. Park and Benjamin Y. Park, in individual and  
6                   representative capacity as trustee of The Park Family Trust, dated December  
7                   19, 2005, owned the real property located at or about 1200 Belmont Ave., San  
8                   Carlos, California, in December 2021.

9                   3. Defendants Kay Kyung N. Park and Benjamin Y. Park, in individual and  
10                   representative capacity as trustee of The Park Family Trust, dated December  
11                   19, 2005, own the real property located at or about 1200 Belmont Ave., San  
12                   Carlos, California, currently.

13                   4. Defendant White Oak Cleaners Service, Inc. owned White Oak  
14                   Cleaners located at or about 1200 Belmont Ave., San Carlos, California, in  
15                   December 2021.

16                   5. Defendant White Oak Cleaners Service, Inc. owns White Oak Cleaners  
17                   located at or about 1200 Belmont Ave., San Carlos, California, currently.

18                   6. Plaintiff does not know the true names of Defendants, their business  
19                   capacities, their ownership connection to the property and business, or their  
20                   relative responsibilities in causing the access violations herein complained of,  
21                   and alleges a joint venture and common enterprise by all such Defendants.  
22                   Plaintiff is informed and believes that each of the Defendants herein is  
23                   responsible in some capacity for the events herein alleged, or is a necessary  
24                   party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
25                   the true names, capacities, connections, and responsibilities of the Defendants  
26                   are ascertained.

## **JURISDICTION & VENUE:**

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1333(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

## **FACTUAL ALLEGATIONS:**

10. Plaintiff went to White Oak Cleaners in December 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in December 2021, but he wanted to return and patronize the business again but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

11. White Oak Cleaners is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible paths of travel in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. White Oak Cleaners provides paths of travel to its customers but fails to provide wheelchair accessible paths of travel in conformance with the ADA Standards.

1       14. One problem that plaintiff encountered was that there was an  
2 unramped step at the entrance of White Oak Cleaners.

3       15. Plaintiff believes that there are other features of the paths of travel that  
4 likely fail to comply with the ADA Standards and seeks to have fully compliant  
5 paths of travel for wheelchair users.

6       16. On information and belief, the defendants currently fail to provide  
7 wheelchair accessible paths of travel.

8       17. The failure to provide accessible facilities created difficulty and  
9 discomfort for the Plaintiff.

10       18. These barriers relate to and impact the plaintiff's disability. Plaintiff  
11 personally encountered these barriers.

12       19. As a wheelchair user, the plaintiff benefits from and is entitled to use  
13 wheelchair accessible facilities. By failing to provide accessible facilities, the  
14 defendants denied the plaintiff full and equal access.

15       20. Even though the plaintiff did not confront the barrier, the entrance door  
16 hardware has a traditional round knob handle that requires tight grasping and  
17 twisting of the wrist to operate. Plaintiff seeks to have this barrier removed as  
18 it relates to and impacts his disability.

19       21. The defendants have failed to maintain in working and useable  
20 conditions those features required to provide ready access to persons with  
21 disabilities.

22       22. The barriers identified above are easily removed without much  
23 difficulty or expense. They are the types of barriers identified by the  
24 Department of Justice as presumably readily achievable to remove and, in fact,  
25 these barriers are readily achievable to remove. Moreover, there are numerous  
26 alternative accommodations that could be made to provide a greater level of  
27 access if complete removal were not achievable.

28       23. Plaintiff will return to White Oak Cleaners to avail himself of its goods

1 or services and to determine compliance with the disability access laws once it  
 2 is represented to him that White Oak Cleaners and its facilities are accessible.  
 3 Plaintiff is currently deterred from doing so because of his knowledge of the  
 4 existing barriers and his uncertainty about the existence of yet other barriers  
 5 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
 6 discriminatory barriers again.

7 24. Given the obvious and blatant nature of the barriers and violations  
 8 alleged herein, the plaintiff alleges, on information and belief, that there are  
 9 other violations and barriers on the site that relate to his disability. Plaintiff will  
 10 amend the complaint, to provide proper notice regarding the scope of this  
 11 lawsuit, once he conducts a site inspection. However, please be on notice that  
 12 the plaintiff seeks to have all barriers related to his disability remedied. See  
 13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 14 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 15 disability removed regardless of whether he personally encountered them).

16  
 17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
 18 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 21 again herein, the allegations contained in all prior paragraphs of this  
 22 complaint.

23 26. Under the ADA, it is an act of discrimination to fail to ensure that the  
 24 privileges, advantages, accommodations, facilities, goods and services of any  
 25 place of public accommodation is offered on a full and equal basis by anyone  
 26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 27 § 12182(a). Discrimination is defined, *inter alia*, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford  
2 goods, services, facilities, privileges, advantages, or  
3 accommodations to individuals with disabilities, unless the  
4 accommodation would work a fundamental alteration of those  
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is  
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
8 defined by reference to the ADA Standards.  
9 c. A failure to make alterations in such a manner that, to the  
10 maximum extent feasible, the altered portions of the facility are  
11 readily accessible to and usable by individuals with disabilities,  
12 including individuals who use wheelchairs or to ensure that, to the  
13 maximum extent feasible, the path of travel to the altered area and  
14 the bathrooms, telephones, and drinking fountains serving the  
15 altered area, are readily accessible to and usable by individuals  
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 27. When a business provides paths of travel, it must provide accessible  
18 paths of travel.

19 28. Here, accessible paths of travel have not been provided in conformance  
20 with the ADA Standards.

21 29. When a business provides door hardware, it must provide accessible  
22 door hardware.

23 30. Here, accessible door hardware has not been provided in conformance  
24 with the ADA Standards.

25 31. The Safe Harbor provisions of the 2010 Standards are not applicable  
26 here because the conditions challenged in this lawsuit do not comply with the  
27 1991 Standards.

28 32. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily  
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 33. Here, the failure to ensure that the accessible facilities were available  
4 and ready to be used by the plaintiff is a violation of the law.

5

6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
8 Code § 51-53.)

9 34. Plaintiff repleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,  
12 that persons with disabilities are entitled to full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishment of  
14 every kind whatsoever within the jurisdiction of the State of California. Cal.  
15 Civ. Code § 51(b).

16 35. The Unruh Act provides that a violation of the ADA is a violation of the  
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 36. Defendants’ acts and omissions, as herein alleged, have violated the  
19 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s  
20 rights to full and equal use of the accommodations, advantages, facilities,  
21 privileges, or services offered.

22 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
23 discomfort or embarrassment for the plaintiff, the defendants are also each  
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
25 (c).)

## 1 PRAYER:

2           Wherefore, Plaintiff prays that this Court award damages and provide  
3           relief as follows:

4       1. For injunctive relief, compelling Defendants to comply with the  
5       Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6       plaintiff is not invoking section 55 of the California Civil Code and is not  
7       seeking injunctive relief under the Disabled Persons Act at all.

8       2. For equitable nominal damages for violation of the ADA. See  
9       Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
10      and any other equitable relief the Court sees fit to grant.

11       3. Damages under the Unruh Civil Rights Act, which provides for actual  
12 damages and a statutory minimum of \$4,000 for each offense.

13       4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
14      to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16 Dated: December 21, 2021

## CENTER FOR DISABILITY ACCESS

By: 

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Attorney for plaintiff